

November 7, 2019

Ann E. Misback  
Secretary  
Board of Governors of the Federal Reserve System  
20th St. and Constitution Ave. NW  
Washington, DC 20551

RE: Federal Reserve Actions to Support Interbank Settlement of Faster Payments; (Docket No. OP – 1670)

Dear Ms. Misback:

The Americans for Financial Reform Education Fund (AFR Education Fund) and Demand Progress Education Fund appreciate the opportunity to comment on the above referenced Proposal by the Board of Governors of the Federal Reserve (the Board). AFR Education Fund is a coalition of more than 200 national, state, and local groups who have come together to advocate for reform of the financial industry. Members of AFR Education Fund include consumer, civil rights, investor, retiree, community, labor, faith based, and business groups. Demand Progress Education Fund (DPEF) is a fiscally-sponsored project of New Venture Fund, a 501(c)3 organization. DPEF and our more than two million affiliated activists seek to protect the democratic character of the internet — and wield it to make government accountable and contest concentrated corporate power.

Payments systems are critical infrastructure; all participants in the financial system depend upon them for every transaction. As such, economists, historians, and legal scholars have often described payments systems as public utilities, with some comparing them to the canals and railways of the Industrial Revolution.<sup>1</sup> As during the construction of canals and railways, the building of new payment systems will undoubtedly involve struggles between entrenched interests, and some private payment networks will rise and fall.

The development of a real-time, ubiquitous payment system is an especially complex, expensive undertaking. Because of the scale of the endeavor, and its potential to impact the American public as a whole, we firmly believe the Board is the appropriate entity to establish a universal 21st century payments system.

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<sup>1</sup> See, e.g., “Facilitating Faster Payments in the U.S.”, Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs, 115th Cong. 1-2 (2019) (statement of The Honorable Sheila C. Bair, Former Chair, Federal Deposit Insurance Corporation); Simon Johnson, (May 16, 2019), Can Bitcoin Win the Digital Payments ‘Gauge War’?, COINDESK, available at <https://www.coindesk.com/can-bitcoin-win-the-digital-payments-gauge-war>

We therefore commend the Board on its decision to establish and implement FedNow, a new interbank 24x7x365 real-time gross settlement (RTGS) system to facilitate real-time payments (RTP) between businesses and consumers. We especially commend Governor Lael Brainard for explicitly affirming that “everyone deserves the same ability to make and receive payments immediately and securely, and every bank deserves the same opportunity to offer that service to its community.”<sup>2</sup>

We consider FedNow to be a significant step toward payments equity. Families living paycheck to paycheck will be able to receive their wages more quickly and more easily pay bills when due, avoiding the common “cascade of negative consequences.”<sup>3</sup> Faster payments based on good funds, without the delayed clearing time experience today for checks and ACH payments, will give consumers greater certainty about their balances, helping them manage their money and avoid overdraft fees. This is crucial. According to data released by the FDIC, consumers paid roughly \$11 billion in overdraft fees in 2017.<sup>4</sup> The payday lending industry alone is responsible for approximately \$8 billion in fees each year.<sup>5</sup> More ubiquitous, free or low-cost person-to-person payment options will make it easier to pay landlords, split rent, receive money from family members or a community organization for an emergency, or be paid electronically for household employment.

As the Board contemplates the legal and operational structure of FedNow, we urge the Board to further embrace its role in creating and safeguarding an equitable, public option within the payments sector. More concretely, we urge the Board to structurally limit private infrastructural power with the payment spaces, by providing an end-user-friendly alternative and introducing “competitive pressure” to keep private payments providers honest toward depository institutions of all sizes and end-users in all locations.<sup>6</sup>

We urge the Board to take the following actions:

- **Safeguarding a Public Option for Payments.** It is of the utmost importance that private interests not dominate services so critical to consumers, businesses, and the real

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<sup>2</sup> Lael Brainard, Governor, Fed. Res., Delivering Faster Payments For All (Aug. 15, 2019), <https://www.federalreserve.gov/newsevents/speech/brainard20190805a.htm>

<sup>3</sup> Bair, *supra* note 1, at 1-2

<sup>4</sup> PETER SMITH, CENTER FOR RESPONSIBLE LENDING, THE STATE OF HIGH-COST OVERDRAFT PRACTICES IN 2017, at 1 (2018). <https://www.responsiblelending.org/research-publication/unfair-market-state-high-cost-overdraftpractices-2017>

<sup>5</sup> DIANE STANDAERT ET AL, CENTER FOR RESPONSIBLE LENDING, PAYDAY AND CAR-TITLE LENDERS DRAIN NEARLY \$8 BILLION IN FEES EVERY YEAR (updated Apr. 2019),

<https://www.responsiblelending.org/research-publication/unfair-market-state-high-cost-overdraftpractices-2017>

<sup>6</sup> See, e.g., K. Sabeel Rahman, *Regulating Informational Infrastructure: Internet Platforms as the New Public Utilities* 2 GEO. L. TECH. REV. 234, 236 (2018)

economy. The Board should focus on providing safe and equitable services that garner the trust of depository institutions, their agents, and retail banking customers. To that end FedNow must be governed and administered in a manner that is transparent, non-discriminatory, and accountable to the public interest.

- **Conditioning FedNow Access in the Interest of Equity.** In the spirit of public purpose, the Board should adopt preventive measures to ensure that FedNow truly creates a fairer payments universe for all users. This might include establishing a firewall between FedNow's core functions and practices that might compromise its integrity. The Board could potentially impose negative obligations to prevent unfair practices that might attend the adoption of FedNow, or offer incentives to participants to proactively enhance relevant consumer protections.
- **Educating the Public Regarding the Public Nature of Payments & Banking.** The Board should consider an educational campaign to accompany the implementation of FedNow, highlighting the role of the Federal Reserve System and other public entities in designing and operating banking and payment systems.

### **Safeguarding a Public Option for Payments**

#### ***The Importance of a Publicly Accountable System***

It is deeply important that the effort to create a universal RTP system be undertaken by an entity that has historically focused on providing nationwide access to payment services, including the existing ACH services.<sup>7</sup> The Federal Reserve System's role as an operator of the current ACH electronic payment system has helped to keep that system very low cost and to avoid the risks of giving The Clearing House, the private operator, a monopoly position.

In this respect, the Federal Reserve System's commitment to providing services to depository institutions on fair and equitable terms is equally important. Unlike a private consortium of the largest banks, the Federal Reserve has a unique mission of public service and must make key considerations based on public policy criteria. With real-time payments infrastructure solely in private hands, the infrastructure's owners (large depository institutions) achieve significant pricing power over smaller depository institutions. Furthermore, large-scale private monopolies can more easily abuse consumers.

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<sup>7</sup> Federal Reserve Actions To Support Interbank Settlement of Faster Payments, 84 FR 39297, 84 Fed. Reg. 39297, 39308 (Aug. 9, 2019) (proposed Aug. 9, 2019), available at: <https://www.federalregister.gov/documents/2019/08/09/2019-17027/federal-reserve-actions-to-support-interbank-settlement-of-faster-payments#footnote-12-p39299>



Because the payments system is crucial to the day-to-day functioning of the financial system, any private entities controlling the payment system will automatically become "too big to fail." By contrast, FedNow does not give rise to the same moral hazard because it will already be operated by the authority that backstops the U.S. financial system. In fact, FedNow can be an inclusive public option, interoperable with private payments systems, but not interconnected in such a way as to endogenously produce systemic risk.<sup>8</sup> Given the reach and relationships of the Board, FedNow can more easily provide resiliency and stability to the faster payment ecosystem in times of crisis.

Overall, a FedNow Service that is subject to transparent public control will make it more likely that faster payments will serve everyone equitably, and will ensure that a public payment system continues to operate in periods of financial stress when private systems may fail.

### *The Importance of Strengthening Consumer Protections*

According to the Board's "Criteria for Evaluating Proposed Payments", as the Board considers the introduction of new services or major enhancements, it should focus not only on reasonable effectiveness and scope, but on "equity", thus ensuring that "an adequate level of service is provided nationwide or to avoid undue delay in the development and implementation of the service."<sup>9</sup> While we understand that the principle of equity applied here is one of competitive equity between depository institutions,<sup>10</sup> we urge the Board to bear equity in mind when analyzing the impact of FedNow on the customers of depository institutions. That is to say, we call on the Board to ensure FedNow is broadly accessible to consumers and businesses on reasonable terms and in comparable quality, that end-users understand the system in a transparent manner, and that FedNow has adequate measures in place to attend to the interests and needs of virtually all consumers and businesses.

As such:

- *We urge the Board to incorporate real-time fraud prevention measures into FedNow's design.* Although we understand the Board is of the position that responsibility for fraud prevention should remain with depository institutions and its clients, at the level of privity, it is of paramount importance that faster payments not lead to 'faster fraud'

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<sup>8</sup> K. Sabeel Rahman, *The New Utilities: Private Power, Social Infrastructure, and the Revival of the Public Utility Concept* 39 CARDOZO L REV. 1621, 1646-47 (2018)

<sup>9</sup> FEDERAL RESERVE BOARD OF GOVERNORS, FEDNOW SERVICE - FREQUENTLY ASKED QUESTIONS [https://www.federalreserve.gov/paymentsystems/fednow\\_faq.htm](https://www.federalreserve.gov/paymentsystems/fednow_faq.htm)

<sup>10</sup> Federal Reserve, *supra* note 7, at 39304

without recourse. Systems that make it faster and easier to pay anyone can be exploited by scammers in myriad ways. As such, consumers and businesses should not bear liability for failing to detect fraudulent transactions simply because the payments occur more quickly. Indeed, allocating liability away from consumers tends to increase confidence and participation within payment systems and creates incentives for account providers and operators to ensure the security and accuracy of those systems.<sup>11</sup>

Just as importantly, it is crucial for the Board to enact rules to prevent, detect, remedy and punish fraudulent uses of its system. It is insufficient to rely only on the participating depository institutions for fraud detection and prevention. In no instance should fraud that attends the FedNow system be governed primarily by private contract between banks and consumers. To the extent the Board needs to revisit rules allocating risk of losses due to unauthorized transactions in the context of FedNow, whether under the Truth in Lending Act (“TILA”) and Regulation Z, or the Electronic Funds Transfer Act (“EFTA”) and Regulation E, the Board should consult with federal regulators under the auspices of Federal Financial Institutions Examination Council (“FFIEC”).

The FedNow Service can also significantly mitigate fraud by incorporating a system to monitor transactions overnight, on weekends, and during holidays. In instances of fraud, institutions should have the ability and duty to place a hold on transmitted funds even if the normal expectation is real time availability. It is also critical that not only sending but also receiving institutions have a duty to monitor and take responsibility for fraud, as fraudsters can only exploit faster payments if they have an account where they can receive funds. Finally, we also urge the Board to review the fraud prevention mechanisms of existing depository institutions to better understand how they will interact with the design and implementation of FedNow and how consumers will be impacted as a result.

- *We urge the Board to minimize data collection and retention, to the extent compatible with reasonable fraud prevention policy.* FedNow will provides access to sensitive financial data and private information to range of institutions. As the Board has suggested it could increase its expectations concerning risk management systems that banks should have in place to handle real-time payments, we urge the Board to likewise increase its expectations concerning data security systems and consumer privacy.

With respect to the Federal Reserve System’s own collection and retention of data, myriad questions arise:

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<sup>11</sup> Matthew W. Swinchart, *Modeling Payments Regulations and Financial Change*, 67 U. KAN. L. REV. 83, 116-17 (2018)

- What information is actually relevant to payments provision such that the Board would need to maintain or store that data?
- To what extent, if any, could FedNow service suppliers access the data?
- To what, if any extent, could this data be shared with consumer reporting agencies?
- To the extent the Board would itself move to monitoring transactions overnight, on weekends, and on holidays, what additional data, if any will it need to collect from users? What data would it need to retain?

We urge the Board to provide answers to these and related questions prior to the implementation of FedNow.

As it is our understanding that participating depository institutions would be able to designate a service provider or agent to submit or receive payment instructions on their behalf, we also ask the Board to prohibit depository institutions from designating agents with poor data security and privacy track records to engage with FedNow.<sup>12</sup>

Although we recognize the importance of a FedNow user directory for interbank settlement and to target fraudulent use, we urge the Board to ensure the directory is only used to facilitate safe and efficient transfers between users. We are very concerned about who would have access to a directory that may contain sensitive information about consumer depository accounts as well as Federal Reserve master accounts. We are especially concerned that depository institutions or their agents may be able to take advantage of the directory to identify and locate consumer accounts at other depository institutions for debt collection purposes. We call on the Board to establish rules that prohibit this type of misuse and only allow access to the consumer data needed for each authorized real time payment transaction. If the Board decides to create a user directory for FedNow, the Board should deny agency privileges to non-depository institutions that have been subject to heightened supervision or enforcement actions due to privacy or security violations.

Overall, the Board must play a role to ensure that data is held securely; that only data necessary for the transaction is collected, and for the minimum time necessary; that the data is not used or shared in ways that violate consumer privacy; and that consumers can

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<sup>12</sup> Federal Reserve, *supra* note 7, at 30918

easily terminate access to their data.

- *We urge the Board to commit to making real-time payments truly accessible and ubiquitous.* The benefits of RTP will not be fully realized if real time payments are not ubiquitous, reaching all consumers and even the smallest financial institutions. FedNow has the potential to truly make real time payments available to all. To make this possible, the Board must take the needs of all consumers into account to make sure that faster payment systems are accessible and work well for all types of users. As the Board contemplates the infrastructure and design of FedNow, it should consider the needs and issues of distinct communities, such as those with limited English proficiency, individuals with disabilities, and older consumers so that everyone can benefit from the efficiency and reliability of real time payments while also addressing unique security and fraud risks. The Board must also understand and accommodate the need of consumers who do not have full access to or facility with the internet, mobile devices, or electronic communications.

As the Board's Notice for Request and Comment acknowledges, the "Monetary Control Act does not specify the "long-run" period over which Federal Reserve services must recover costs, nor does the legislative history of the MCA indicate that Congress intended a specific length of time for the cost recovery period."<sup>13</sup> It is thus conceivable that the Board could choose to "subsidize" FedNow implementation for institutions serving communities in need.<sup>14</sup>

### ***Conditioning FedNow Access in the Interest of Equity***

We understand it is the Board's position that it lacks plenary regulatory or supervisory authority over all firms involved in the U.S. payment system.<sup>15</sup> However, the Board is still responsible for developing regulations and supervisory policies for elements of the payment system that fall within the Federal Reserve's jurisdiction for other reasons.<sup>16</sup>

We note that the Board has historically cooperated with Congress and other regulatory agencies to regulate the payments industry in ways that modify the behavior of participating depository institutions and agents.<sup>17</sup> For instance, under the auspices of the Bank Services Company Act, the Board works with the Federal Deposit Insurance Corporation (FDIC) and the Office of the

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<sup>13</sup> Federal Reserve, *supra* note 7, at 39313

<sup>14</sup> *Id.*

<sup>15</sup> Federal Reserve, *supra* note 7, at 39313

<sup>16</sup> THE FEDERAL RESERVE BOARD OF GOVERNORS, THE FEDERAL RESERVE SYSTEM PURPOSES & FUNCTIONS: FOSTERING PAYMENT AND SETTLEMENT SYSTEM SAFETY AND EFFICIENCY, [https://www.federalreserve.gov/aboutthefed/files/pf\\_6.pdf](https://www.federalreserve.gov/aboutthefed/files/pf_6.pdf)

<sup>17</sup> *Id.*



Comptroller of the Currency (OCC) to examine and regulate certain payment services provided on behalf of or to federally insured banks.<sup>18</sup>

At the consumer level, the Board has promulgated rules related to payments system through the Fair Credit Billing Act of 1974, the Electronic Fund Transfer Act of 1978, and the Expedited Funds Availability Act of 1987 (EFAA). Although the Dodd-Frank Act may have transferred rulemaking authority for the first two statutes to the Consumer Financial Protection Bureau (CFPB), the Board still shares rulemaking authority with respect to EFAA, which it has exercised in order to reconfigure not only the speed, but the qualitative structure of interbank payments.<sup>19</sup> (Indeed, some analysts have argued that a provision<sup>20</sup> in the current version of EFAA creates a duty for the Board to move toward real-time payments in “as short a time as possible.”

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More recently, the Board has worked with the Treasury to implement the Unlawful Internet Gambling Enforcement Act of 2006, which requires payment system participants to prevent or prohibit unlawful Internet gambling transactions. In 2010, the Dodd-Frank Act provided the Board the power to regulate and supervise systemically important payment and settlement firms given an appropriate designation by Federal Stability Oversight Council (FSOC).<sup>22</sup> Indeed, in 2012, FSOC designated The Clearing House Payments Company, L.L.C., to be a “financial market utility” under Federal Reserve System oversight on the basis of its role as operator of the Clearing House Interbank Payments System.<sup>23</sup>

Finally, we understand the Federal Reserve Bank of New York is currently arguing (in federal court) that the Federal Reserve Act and other statutes do not create rights to a Federal Reserve Bank master account<sup>24</sup> (even for member institutions)<sup>25</sup> and that this litigation may determine if access to the Federal Reserve’s payment infrastructure “is a right for certain financial institutions

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<sup>18</sup> See 12 U.S.C.A. § 1867. It is worth noting that the Board could potentially exercise its authority under Bank Service Company Act (BSCA) to examine and regulate the performance of The Clearing House RTP system. See also 12 U.S.C. §§ 1464, 5514(e), 5515(d), 5516(e).

<sup>19</sup> THE FEDERAL RESERVE BOARD OF GOVERNORS, *supra* note 16

<sup>20</sup> 2 U.S.C.A. § 4002 (West)

<sup>21</sup> Aaron Klein, The fastest way to address income inequality? Implement a real time payment system, BROOKINGS INST. (Jan. 2, 2019),

<https://www.brookings.edu/research/the-fastest-way-to-address-income-inequality-implement-a-real-time-payment-system/>

<sup>22</sup> See 12 U.S.C. §§ 5461-72 (2012).

<sup>23</sup> Press Release, U.S. Dep’t of the Treasury, Financial Stability Oversight Council Makes First Designations in Effort to Protect Against Future Financial Crises (July 18, 2012),

<https://www.treasury.gov/press-center/press-releases/Pages/tg1645.aspx> [<https://perma.cc/HP7M-KFYQ>]

<sup>24</sup> TNB USA INC., Plaintiff, v. FEDERAL RESERVE BANK OF NEW YORK, Defendant., 2019 WL 2559325 (S.D.N.Y.)

<sup>25</sup> TNB USA INC., Plaintiff, v. FEDERAL RESERVE BANK OF NEW YORK, Defendant., 2019 WL 3777823 (S.D.N.Y.)



under the Depository Institutions Deregulation and Monetary Control Act of 1980 or a privilege subject to terms developed by the Board and Federal Reserve Banks.”<sup>26</sup>

Given the Federal Reserve System’s demonstrated commitment to consciously managing access to payments infrastructure as new types of financial institutions develop, and that the Federal Reserve System has “traditionally influenced retail payment markets through its role as an operator”<sup>27</sup>, we urge the Board to manage and operate the FedNow service in a way that advances an equitable system for all.

For instance, it is our position that retail overdraft fees have no place in an RTP system that eliminates delays between writing and clearing checks. The Board should prohibit depository institutions from charging overdraft fees for transactions made through FedNow.

We would argue that, per the Board’s Public Benefits Criterion, prohibiting retail overdraft fees with respect to FedNow transactions yields a clear public benefit, including by promoting the integrity of the payments system, reducing the risk associated with payments services, and improving the efficiency of the payments system by eliminating friction and unnecessary costs for end-users that ultimately hinder economic activity and dampen growth.<sup>28</sup>

FedNow should require confirmation of good funds before a payment can be sent and prohibit participating depository institutions from approving amounts greater than the available balance in a consumer’s account. Operationally, as FedNow will require Reserve Banks to send an inquiry message to the receiver's depository institution seeking confirmation that the receiver's depository institution maintains a valid account for the receiver, they should simultaneously send an inquiry message to the sender’s depository institution confirming that accounts have sufficient funds to engage in the transaction without triggering overdraft fees. Otherwise, institutions may find a way to preserve overdraft fees even in a system predicated on good funds. Overall, rules governing real time payments through FedNow must ensure that only available funds can be sent in real time.

To the extent direct prohibition of overdraft fees is infeasible, we urge the Fed to modulate the fees it charges for use of the FedNow service to promote equity for end-users. We recognize that the Federal Reserve does not have regulatory authority over the pricing set by a private sector system or to require a private-sector system to extend the service to banks of all sizes. We have

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<sup>26</sup> Pratin Vallabhaneni, Fed Announces "FedNow" Real-Time Payments Service, WHITE & CASE (Sep. 5, 2019), <https://www.whitecase.com/publications/alert/fed-announces-fednow-real-time-payments-service>

<sup>27</sup> Federal Reserve, *supra* note 6, at 39300

<sup>28</sup> *Id.* at 39304; For more information on the ways in which overdraft fees hinder economic activity, *see* Smith *supra*, note 6

also noted that some industry stakeholders have taken pains to argue that the Monetary Control Act requires that “what the Fed does as a payments service operator is supposed to be completely removed from what they do as a regulator.”<sup>29</sup>

However, in setting the fees of its own services, the Monetary Control Act requires the Federal Reserve System “give due regard to competitive factors and the provision of an adequate level of such services nationwide.”<sup>30</sup> The Board, in turn has adopted its own pricing principles, which reflect additional public policy considerations.<sup>31</sup> Most importantly, “pricing principle 7” states that fee structures may be designed to reflect “desirable long-run improvements in the nation's payment system.”<sup>32</sup>

While we understand the desire of some industry stakeholders for infrastructure like FedNow to maintain a uniform pricing structure, we would also hope the Board will use its authority over the pricing structure to promote equity throughout the payments system, and more specifically, to hinder depository institutions from simply passing the costs of FedNow services onto businesses and consumers.

There exists an understandable fear that a private service operator like The Clearinghouse may modulate prices in favor of the operator's owner banks, exacerbating inequities within the system.<sup>33</sup> However, with FedNow, the Board has an opportunity to use the pricing structure to encourage participating depository institutions to more readily integrate consumer protections. For instance, the Fed could explore offering a discount on service fees in exchange for a commitment to enhance safeguards for consumers. (Conversely, it could institute a surcharge for depository institutions that do not enhance safeguards for consumers.)

Finally, as the Board considers the impact of providing intraday credit on a 24x7x365 basis, we urge the board to consider modulating the distribution and pricing of such credit based on the extent to which participating institutions adhere to broader mission of FedNow: to ensure that the benefits of real-time payments are available to everyone in a meaningful manner.

### ***Educating the Public Regarding the Public Nature of Payments & Banking***

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<sup>29</sup> Rick Morgan, The Clearing House: FedNow could create ‘bifurcation’ in real-time payments, BANK INNOVATION (Oct. 31, 2019), <https://bankinnovation.net/allposts/biz-lines/payments/the-clearing-house-fednow-could-create-bifurcation-in-real-time-payments/>

<sup>30</sup> 12 U.S.C.A. § 248a (West)

<sup>31</sup> See Board of Governors of the Federal Reserve System, “Federal Reserve Bank Services; Proposed Fee Schedules and Pricing Principles,” 45 FR 58689, 58690-58692 (Sep. 4, 1980). Available at <https://cdn.loc.gov/service/ll/fedreg/fr045/fr045173/fr045173.pdf>.

<sup>32</sup> *Id.*

<sup>33</sup> Federal Reserve, *supra* note 7, at 39305

Although we understand that the Board and Reserve Banks require time to implement an operational undertaking as significant as FedNow, we urge the Board to move forward with all prudent speed, and to make its efforts and goals known to the broader public.

The establishment and implementation of FedNow provides the Board and Reserve Banks with a unique opportunity to shed light on the public backbone of payments systems. By the same token, it creates space for public stewards to clarify which features of the payments system arise from policy choices made by the federal government and its instrumentalities, and which arise from policy choices made by for-profit depository institutions. For instance, following the implementation of FedNow, the Board can use its leadership and authority as a banking regulator to clarify that following the implementation of FedNow, overdraft fees within the U.S. banking system will not be attributable to delayed clearing time, but fee administration by depository institutions.

As the Board has recognized, there are many corporate actors — including not only The Clearing House, but “shadow payment platforms” (SPPs) such as Facebook’s Libra Project<sup>34</sup> — that intend to develop RTP-based products in the coming years.<sup>35</sup> Simply put, a FedNow launch in 2023 or 2024 may leave significant time for companies with spotty records on consumer protection to develop and implement RTP-systems that will gain popularity with consumers long before they experience the benefits of FedNow at the user interface. We fear that the longer the Federal Reserve waits to educate the public about FedNow, the more it risks private sector actors developing extractive relationships with the same consumers and businesses who stand to benefit from FedNow. In this sense, we echo other commenters who have expressed concerns that slow implementation will lead customers to frequent payment services that are insufficiently regulated and potentially unsafe.<sup>36</sup>

In the spirit of FedNow’s role as a public option, we urge the Board to take measures to ensure that FedNow gains prominence in the public eye. As it stands, most businesses and consumers have little knowledge of the workings of payment systems and other critical financial sector infrastructure. The development and implementation of FedNow presents an infrequent educational opportunity: the public can learn about the nature of payments systems in general and better appreciate the role that public institutions serve in banking and commerce. A popular literacy campaign concerning federal payments could also create space for broader dialogue

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<sup>34</sup> See Dan Awrey and Kristin van Zwieten, *Mapping The Shadow Payment System* (October 7, 2019). SWIFT INSTITUTE WORKING PAPER NO. 2019-001. Available at SSRN: <https://ssrn.com/abstract=3462351>

<sup>35</sup> Relatedly, we strongly support the Board’s proposal to limit direct participation in FedNow to only the institutions that qualify for a master account.

<sup>36</sup> Federal Reserve, *supra* note 6, at 39306



regarding the payment system and the accessibility and affordability of banking services, including proposals like that from Representative Ocasio-Cortez and Representative Bill Pascrell for FedNow to partner with the United States Postal Service in pairing real-time payments with universal public bank accounts.<sup>37</sup>

In sum, we urge the Board to establish and protect FedNow as a safe, accessible, and ubiquitous public option for all end-users, to protect the integrity of the FedNow ecosystem by limiting access to institutions that comply with consumer protections, and to take credit for the development of a public payments option in a broader effort to educate the public.

If you have questions, please contact Raúl Carrillo (Fellow, Americans for Financial Reform Education Fund; Policy Counsel, Demand Progress Education Fund) at [raul@ourfinancialsecurity.org](mailto:raul@ourfinancialsecurity.org).

Sincerely,  
Americans for Financial Reform Education Fund  
Demand Progress Education Fund

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<sup>37</sup> Letter from Representative Ocasio-Cortez and Representative Bill Pascrell to Jerome Powell, Chair, Board of Governors of the Federal Reserve System and Megan Brennan, Postmaster General, United States Postal Service (Oct. 30, 2019), available at [https://pascrell.house.gov/uploadedfiles/pascrell\\_ocasio-cortez\\_postal\\_banking\\_letter.pdf](https://pascrell.house.gov/uploadedfiles/pascrell_ocasio-cortez_postal_banking_letter.pdf)

